

EXHIBIT D

1 timeline.

2 MR. KENNEDY: Exhibit 16, please.

3 (Exhibit No. 16 was premarked for
4 identification.)

5 BY MR. KENNEDY:

6 Q Let's take a look at that. Do you
7 remember this problem with historical data related
8 to active ingredient?

9 A I don't remember it being active
10 ingredient. Let me see.

11 Q Let's look at 16. This document is from
12 10/8/2010. All right? Is it titled on the first
13 page "Business Idea Description"? Do you see
14 that?

15 A I do.

16 Q And it says: "Submit to
17 IS-Business-Idea mailbox." What is IS?

18 A They are the group in corporate that can
19 write a query for your programs.

20 Q And this is requested for on behalf of
21 John Mortelliti. Is that you?

22 A Yes.

23 Q And your department at that point in
24 time was loss prevention, true?

1 A Yes.

2 Q And the title is "Control Drug IRR

3 Update." True?

4 A Yes.

5 Q And that is what we've been talking

6 about, the IRR report that's kind of foundational

7 to your monitoring program, true?

8 A Yes.

9 Q When was the last time you reviewed this
10 document?

11 A I don't -- I don't know. I --

12 Q It says: "Summary Description and
13 Objectives: DEA expects CVS to prevent suspicious
14 orders from being filled out of our DCs."

15 Did I read that right?

16 A You did.

17 Q And that would be true, that's what the
18 DEA expects, does it not?

19 A Yep.

20 Q Next sentence: "The current IRR does
21 not provide the proper information to meet the
22 DEA's needs."

23 Did I read that right?

24 A You read it correctly.

1 Q Next sentence, does it state: "We need
2 control drugs to be monitored by 'active
3 ingredient.' Currently the control drugs are
4 monitored by item. The IRR loses all order
5 history when the info on the item changes causing
6 CVS to be noncompliant with DEA expectations."

7 Did I read that correct?

8 A You read it correctly.

9 Q Were those your words, sir? Were those
10 your words?

11 A That's what I put in here.

12 Q Now --

13 A But --

14 Q No, I just asked you if those were your
15 words, and we'll go into detail.

16 A Okay.

17 Q Let me ask you first, sir, you weren't
18 in -- in the habit of writing and creating and
19 filling in documents on things you didn't believe,
20 stuff you thought was untrue? Was that your habit
21 and your practice at CVS back in 2010 or 2009 or
22 '08, was that ever your practice to -- to write
23 things and document things that you believed were
24 not true? Was that your practice, sir?

1 A I can -- I could tell you that this
2 document --

3 Q First answer my question as to whether
4 or not it was your practice to create or fill in
5 documents, make memos that you believed were
6 untrue. Was that your practice while you were at
7 CVS from when you began all the way up here to
8 2010? Was that your practice?

9 MR. BUSH: And I object to you
10 interrupting the witness. He was in the middle of
11 his answer.

12 Go ahead. You can answer.

13 THE WITNESS: I worded it this way so I
14 could get this pushed through quickly.

15 MR. KENNEDY: I'm going to -- go ahead,
16 but I'm going to move to strike. Go ahead.

17 MR. BUSH: Finish your answer.

18 THE WITNESS: This -- this had nothing
19 to do with the DEA needs. We had a process in
20 place. If we went by ingredient, it would have
21 made it a lot easier, a lot quicker, and
22 unfortunately, CVS has a -- a history of if you
23 don't put something on the fast path action, it
24 could take forever to get done.

1 So I did word it this way to try to get
2 this pushed through quicker so the reports could
3 be easier. We wanted to move this over to the
4 Knoxville team, and it would be a lot easier for
5 them to digest the information if it was by
6 ingredient.

7 MR. KENNEDY: All right. I'm going to
8 move to strike.

9 Could you please read back my question.

10 BY MR. KENNEDY:

11 Q Sir, I want you to listen to the
12 question and -- and answer it the best you can.

13 MR. BUSH: Well, wait a minute, she's
14 going --

15 MR. KENNEDY: She's going to read you
16 the question back so --

17 MR. BUSH: Let her read it back.

18 THE WITNESS: Okay.

19 MR. KENNEDY: -- you can hopefully
20 answer it.

21 (Whereupon, the requested record
22 was read.)

23 THE WITNESS: Not a standard practice.

24 BY MR. KENNEDY:

1 Q And let me ask you, sir, when -- did you
2 change this document or redo this document and --
3 and correct it at any point in time?

4 A No.

5 Q And the -- the purpose of -- of this
6 document was to go to whom?

7 A I believe -- I'm not sure who was head
8 of it at the time. It may have been Gary
9 Misiaszek. I'm not sure. Whoever received the --
10 the IS request.

11 Q And when this says "Target start," it
12 says -- did you put in there "ASAP"?

13 A Yes.

14 Q So you wanted this done as soon as
15 possible.

16 A I did.

17 Q And under "Business drivers," do you
18 state: "We can be fined and/or penalized by the
19 DEA due to the current environment"? Did you
20 state that?

21 A I did.

22 Q Let me ask you, sir, if -- if CVS was
23 noncompliant here in October of '08 because the
24 drugs were being monitored by active ingredient,

1 if you were noncompliant on this date, can we
2 agree that you and CVS would have been
3 noncompliant all the way back from the beginning
4 with your IRR in '09 when you started reviewing?

5 MR. BUSH: Objection.

6 BY MR. KENNEDY:

7 Q Can we agree?

8 MR. BUSH: Objection.

9 THE WITNESS: No, we were compliant. I
10 worded this to get it pushed through the system.

11 BY MR. KENNEDY:

12 Q Sir, the IRR with the way it was
13 structured, monitoring by active ingredient, that
14 was true from the very beginning. True?

15 MR. BUSH: Objection. Misstates the
16 document and the testimony.

17 BY MR. KENNEDY:

18 Q Is that true?

19 MR. BUSH: Objection.

20 BY MR. KENNEDY:

21 Q Excuse me. Let me restate that.

22 The monitoring of controlled substances
23 was not being monitored by active ingredient since
24 the beginning of the IRR's creation in '09,

1 correct?

2 A No.

3 Q So -- you're saying that originally when
4 it came into play in '09 when you started
5 reviewing it, originally it was monitored by
6 active ingredient. Is that your testimony?

7 A It was by the drug active ingredient.
8 It was broken out by the particular drug.

9 Q And that's the way it was when you
10 started in '09.

11 A Yes.

12 Q And when did it change so that it was
13 not monitored by active ingredient, as stated here
14 in October of 2010? When did it change?

15 MR. BUSH: Objection.

16 THE WITNESS: It was always monitored by
17 the active -- the ingredient.

18 BY MR. KENNEDY:

19 Q Do you state here this -- right here:
20 "We need control drugs to be monitored by active
21 ingredient"? Is that your statement?

22 A I wanted it broken down by the -- the
23 active ingredient in all the drugs into one -- one
24 component of the IRR.

1 Q Okay. So my question is simple. The
2 way it was monitoring with respect to active
3 ingredient here in -- in October of 2010 was the
4 same way it was being monitored in '09 when it
5 started. True?

6 A The same results, just a different
7 format.

8 Q My answer -- the answer to my question
9 is "yes," correct? The same way it was being
10 monitored here in October of 2010, the same way it
11 was being monitored from the beginning in '09,
12 true?

13 A I believe --

14 Q The report --

15 A Yes.

16 Q -- it hadn't been changed --

17 A Yes.

18 Q -- between '09 and 2010, correct?

19 A Yes.

20 Q And so my question is real simple.
21 If -- if the report in 2010 is such that it causes
22 CVS to be noncompliant with DEA expectation, if
23 that's true in October of 2010, then that would be
24 true back in '09 when you started, because there

1 was no change in this IRR report during that
2 period, true?

3 MR. BUSH: Objection.

4 THE WITNESS: This is not true. I
5 worded it this way, I -- hindsight 20/20, I
6 shouldn't have. But I worded it this way to get
7 this pushed through so we could get a different
8 format as quickly as possible. I wanted to get
9 this information turned over to the new team in
10 Knoxville under a new format.

11 BY MR. KENNEDY:

12 Q And, sir, at the time that you put this
13 report together and used these words: "Currently
14 the control drugs are monitored by item. The IRR
15 loses all order history when the info on the item
16 causing -- changes causing CVS to be noncompliant
17 with DEA expectations," when you wrote those
18 words, you had known about this problem already
19 for several weeks, had you not?

20 A I don't recall that. As soon as I had
21 the problem, I reported it. This is two different
22 issues on here.

23 Q Sir, the report had been designed to
24 provide historical data, hadn't it, the IRR?